

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN MORO,

Plaintiff,

V.

ANGELA WINSOR, et al.,

Defendant.

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Civil No. **05-452-CJP**

ORDER

PROUD, Magistrate Judge:

Before the Court is plaintiff's "Motion to Notify." (**Doc. 128**). Plaintiff is inquiring about the witness fee and mileage rate that he must pay each of his trial witnesses. Plaintiff also asks whether the jury will be informed of the so-called "mail box rule," which deems a document mailed when it is placed in the appropriate receptacle for prison mail. Plaintiff also notifies the Court that he has Crohn's Disease, which may affect him during trial.

The Court takes notice of plaintiff's Crohn's Disease, and each of plaintiff's questions will be addressed in turn.

Witness Fees and Mileage

The witness fee for each witness is \$40.00 per day. (**28 U.S.C. § 1821**). Witnesses are also paid a travel allowance of 58.5¢ per mile. (**5 U.S.C. § § 5704 and 5707; 41 C.F.R. 301-10**). These fees do not apply to inmate witnesses, whose appearance will be secured by the Court, provided they can be identified and located within the penal system. (**28 U.S.C. § 1821(f)**).

Federal Rule of Civil Procedure 45 requires that subpoenas, and the required fees, be

personally served upon the witness. When a litigant is proceeding as a pauper, as plaintiff is, the Court assumes the duty of serving all process, but there is no waiver or advancement of the required prepayment of the witness fees. **28 U.S.C. § 1915(d); see also 28 U.S.C. § 1821(f); and *McNeil v. Lowney*, 831 F.2d 1368, 1373 (7th Cir. 1987).** Therefore, the Court will not issue the subpoenas until the witness fees are produced by plaintiff.

The payment of the mileage fee cannot be determined until the Court knows exactly whom plaintiff desires to subpoena.¹ Upon receipt of that information and the \$40.00 per witness fee, the Court will be in a position to inform plaintiff of the mileage payment due for each witness. The Court will then issue the subpoenas upon receipt of the mileage payment for each witness. Therefore, time is of the essence and plaintiff must inform the Court of exactly which witness(es) he desires to subpoena and forward the witness fees for each of those witnesses.

The Mailbox Rule

Plaintiff does not specify whether he favors or opposes the jury being informed of the “mailbox rule” (although Court perceives plaintiff favors the admission of such information). The parties are generally in charge of what evidence and information is presented to the Court. The Court’s role is to determine the relevance and admissibility of evidence if a party actually proposes or opposes admission. Therefore it is premature for the Court to rule on whether such information will be admitted, limited or precluded.

IT IS THEREFORE ORDERED that on or before **December 19, 2008**, plaintiff shall

¹For planning purposes, the Court calculates the mileage amount due for a witness traveling the 86.33 miles from Big Muddy River Correctional Center in Ina, Illinois, to the courthouse would be \$101.20 (for the round trip).

inform the Court of those individuals to whom subpoenas should be issued, and forward the required \$40.00 witness fee for each individual (by separate check or money order for each individual).

IT IS SO ORDERED.

DATED: December 3, 2008

s/ Clifford J. Proud
CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE